

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 9 February 2023

**Public Authority:** Framlingham Town Council  
**Address:** 10 Riverside  
Framlingham  
Suffolk  
IP13 9AG

#### **Decision (including any steps ordered)**

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1. The complainant requested information from Framlingham Town Council ("the Council") relating to legal advice sought by the Council.
2. The Commissioner's decision is that the Council is entitled to rely on section 42(1) (legal professional privilege) of FOIA to withhold the requested information.
3. The Commissioner does not require the Council to take any steps.

#### **Request and response**

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4. On 30 June 2022, the complainant wrote to the Council and requested information in the following terms:

"I wish to request under the Freedom of Information Act a copy of the questions recently sent to Counsel regarding the funding from the Town Council for Castle Community Rooms please.

I asked for this information by email on 22.6.22. but since that date it has been brought to my attention that a Town Councillor has given this information to a member of the public"

5. The Council responded on 21 July 2022. It stated that it was withholding the requested information and cited the legal professional privilege exemption under section 42(1) of FOIA as its basis for doing so. It upheld this position at internal review.

## **Reasons for decision**

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6. This reasoning covers whether the Council is entitled to rely on section 42(1) of FOIA to refuse to provide the requested information.
7. Section 42(1) of FOIA provides that information is exempt from disclosure if the information is protected by legal professional privilege and this claim to privilege could be maintained in legal proceedings. Legal professional privilege protects the confidentiality of communications between a lawyer and client.
8. In this case, the complainant has requested legal advice sought by the Council relating to the awarding of a grant. The Commissioner is satisfied from the wording of the request that the information falling within the scope of this request would constitute confidential communications between the client and lawyer, made for the main purpose of seeking or giving legal advice. This means that this information is subject to legal professional privilege.
9. The Commissioner notes that when making the request the complainant stated, "it has been brought to my attention that a Town Councillor has given this information to a member of the public". If this were the case the privilege may have been waived as privilege can only attach to communications which remain confidential. Where a privileged communication has been made available to the public or to a third party without restriction any privilege attached to the document will have been lost.
10. In the course of his investigation the Commissioner asked the Council to confirm whether the questions to Counsel were provided to any member of the public or a third party. The Council confirmed that its position is as follows:

"The Town Council is not aware of any Councillors giving the questions to Counsel to a member of the public. Councillors were briefed to keep all aspects of the legal advice confidential. The Town Council did not make a decision to make public knowledge the questions put to or the advice and opinion received from Counsel. The Town Council remains satisfied that the questions to Counsel and their advice remain confidential.

It is in the public domain that the Town Counsel sought advice and that this advice confirmed there were no legal barriers to the funding, but the precise details remain confidential under legal privilege.”

11. Although the complainant maintains that they were told that the information was disclosed to a member of the public, in the absence of any evidence that this occurred the Commissioner accepts the Council's position that the privilege has not been waived. The exemption provided by section 42(1) of FOIA is, therefore, engaged in relation to this information. The Commissioner will now go on to consider the public interest test.
12. In balancing the opposing public interest factors under section 42(1), the Commissioner considers that it is necessary to take into account the in-built public interest in this exemption: that is, the public interest in the maintenance of legal professional privilege. The general public interest inherent in this exemption will always be strong due to the importance of the principle behind legal professional privilege: safeguarding openness in all communications between client and lawyer to ensure access to full and frank legal advice. A weakening of the confidence that parties have that legal advice will remain confidential undermines the ability of parties to seek advice and conduct litigation appropriately and thus erodes the rule of law and the individual rights it guarantees.
13. It is well established that where section 42(1) of FOIA is engaged, the public interest in maintaining the exemption carries strong, in-built weight, such that very strong countervailing factors are required for disclosure to be appropriate. The Commissioner notes the decision in the *Cabinet Office v Information Commissioner and Gavin Aitchison (GIA 4281 2012)* where, at paragraph 58, Upper Tribunal Judge Williams said:

“...it is also, in my view, difficult to imagine anything other than the rarest case where legal professional privilege should be waived in favour of public disclosure without the consent of the two parties to it”.
14. The Commissioner considers that the balance of public interest lies in withholding the information and protecting the Council's ability to obtain free, frank and high quality legal advice without the fear of premature disclosure. The Commissioner is not aware of any public interest arguments that are strong enough to outweigh or override the inbuilt public interest in the information remaining protected by legal professional privilege.

15. The Commissioner has concluded that the public interest in maintaining the exemption at section 42(1) outweighs the public interest in disclosure. Therefore, the Council has correctly applied section 42(1). The Commissioner requires no further action to be taken by the Council in relation to this request.

## Right of appeal

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16. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals,  
PO Box 9300,  
LEICESTER,  
LE1 8DJ

Tel: 0300 1234504

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

17. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
18. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Signed .....**

**Victoria James**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**